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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
Seeks Comment on Proposals to Modify the)	
Commission's Rules Relating to High-Cost)	
Universal Service Support)	

Initial Comments of Montana Independent Telecommunications Systems (MITS)

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Introduction

Montana Independent Telecommunications Systems (MITS) is a trade association of small, rural telecommunications companies operating primarily in Montana but also serving parts of North Dakota and Wyoming.¹ Our smallest member serves approximately 1,000 access lines. Our largest member serves approximately 30,000 access lines. Our service areas are among the most sparsely populated in the Nation. In fact, most of our members serve on average less than two access lines per square mile. Despite this challenge, we have tried to be as creative as possible in linking our individual networks together and forming partnerships to offer the widest possible array of wireless and advanced services to supplement and complement our basic local wireline voice service.

All of our members provide basic and custom local calling features. All provide dial-up and DSL Internet access services. Nearly all provide long distance voice services. Nearly all provide dedicated actual and virtual data transport services. Most provide fully interactive video conferencing across a network of more than 100 studios, utilizing ATM technology in order to make the necessary bandwidth usage efficient and affordable. More than half provide wireless voice services and are exploring how to use wireless broadband service to supplement DSL.

The point of the foregoing description is to show that the carriers supporting these comments do not just provide a modicum of service and then watch their USF checks roll in. They are engaged. True, their central business remains bringing highly reliable basic telephone service to some of the most remote regions of the Nation. But they also

¹ MITS' members are: Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Southern Telephone Company and Triangle Telephone Cooperative Association

perceive their mission to include bringing wireless services as well as advanced telecommunications and information services to these areas at rates that are as comparable as possible to rates for similar services in urban areas. Therefore, the MITS member-companies are almost as concerned about how their wireless and broadband services will fare under “reformed” universal service support mechanisms as they are about their basic wireline voice services.

We have reviewed the four proposals regarding which the Joint Board seeks comment. Our presumption is that the Joint Board intends to make some kind of recommendation to the FCC, either endorsing one of these proposals or some hybrid or permutation of the proposals. We applaud the timing of this inquiry insofar as we believe that the intercarrier compensation reform in which the FCC is currently engaged should occur in coordination with reform of the more explicit universal service support mechanisms. For example, before the federal Universal Service Fund is asked to replace revenues lost by rural carriers from FCC mandated reductions in access charges, policymakers should ensure that the Fund’s own future is secure.²

MITS’ initial comments will concentrate on three areas. First, we shall explore whether it is wise to grant money to each state PUC for subsequent distribution to that state’s ETCs. Second, we shall address the issue of whether the national local rate benchmarks being proposed are in compliance with the letter and the spirit of the Telecommunications Act of 1996 (Act). Finally, we shall discuss whether there are circumstances under which the creation of a state universal service fund is inappropriate.

² Congress recognized the importance of keeping the USF viable. 47 U.S.C. §254 (b)(5) provides that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”[emphasis added]

I. Compared to the current system, block grants of USF funds to the States are inappropriate: 1) because State Commissions rarely if ever have expertise that is comparable to that of providers for the purposes of making investment decisions; 2) because the funding process would likely become politicized, causing fund distribution decisions to be based less on objective need and more on political relationships; and 3) because many public utility commissions are already stretched far too thin to absorb the massive new accounting and reporting requirements these proposals would impose on them.

As we understand the proposals, all are alike insofar as they envision that pursuant to some new methodology, USF funds in the future will flow to states instead of carriers. The states will then distribute the funds to the carriers pursuant to FCC guidelines.

The methodology by which funds are allocated to the various states are of critical importance. The proposals differ in the amount of discretion they give the FCC. For example, the SAM proposal appears to be pretty wide open. It suggests a number of factors upon which the method could be based, including the results of a cost model that uses either embedded or forward looking costs, among others.

This lack of specific direction to the FCC as to methodology appears to be one of the principle weaknesses of the SAM proposal. Currently, debate is occurring as to whether such a large share of the current non-rural funding mechanism should go primarily to carriers in a couple of southern states.³ This debate, which has been hotly contested and has required thousands of man-hours, would almost certainly pale in comparison to the political struggles that are likely to arise when every state in the country steps up to claim what it considers to be its fair share of the Fund. Rather than

³ SEE, e.g., Qwest Corp. v. FCC 258 F3d 1191 (2001)

dealing with that issue up front by narrowing the FCC's range of allocation methodologies, the SAM proposal instead simply trusts that the FCC will come up with a method that is acceptable to the states. At least to our minds, the purpose of a Federal-State Joint Board should in part be to give the FCC direction as to what is likely to be acceptable to the states or even perhaps to identify the fundamental differences between the states that may require the FCC to treat some states differently.

Of course the allocation of Federal Universal Service Funds to the states is controversial regardless of the methodology the FCC uses to make such allocations. Interestingly, all four proposals call for allocations to the states (as opposed to the current allocation method wherein allocations are made directly to providers) at some point during the course of each proposal's reformation of the Federal Universal Service Fund.⁴ We assume that what the proposals mean by "states" in the phrase "allocation to the states" means allocation to state public utility commissions -- unless for some reason the commission in a given state lacks the jurisdiction to implement the proposal. MITS has serious concerns about allocating USF to state commissions and even more serious concerns about state commissions determining how those funds are to be invested.

One of the greatest difficulties inherent in simply allocating funding to state public utility commissions is that state commissions are so different from each other. For example some state commissions are made up of members that are appointed (such as by the state's Governor) and some are made up of members who are elected (generally either at-large or by geographic district). For those commissions that are appointed, one might assume that the entity making the appointment would require of the prospective

⁴ Even Billy Jack Gregg's proposal does so, although it waits until the third and final phase (the "long term plan") of his proposal to do so.

appointee some degree of sophistication with respect to knowledge of the industries the commission regulates. Of course, that is not necessarily the case. We doubt that anyone would be surprised if a few commissioners across the country may have been appointed for reasons that were more political than scientific.⁵

Other commissions are elected. In Montana, at least, candidates need not show any familiarity with regulation or regulated industries in order to appear on the ballot. Some do have such familiarity, of course, but many do not. Some are primarily interested in energy matters. Finally, even among those who do have expertise in telecommunications; rare is the candidate who comes into the office with any specific depth of understanding of the Federal Universal Service Fund. For the most part, MITS' experience is that elected commissioners, almost without exception, learn about the program while on the job. In Montana, unfortunately, we have further complicated the expertise problem by recently adopting strict term limits. These limits have resulted in much more rapid turnover in commissioners. This in turn has led to the relatively rapid departure of commissioners who have gained a level of sophistication in the area of universal service and its support mechanisms.

Additionally, there are tremendous differences between state commissions in terms of their resources, human and otherwise. In a cruel bit of irony, those states that are likely to need universal service the most are also often the same states whose relatively small population base prevents the raising of sufficient taxes to have a large, fully-staffed commission. At least in Montana, the state commission barely has sufficient resources to keep up with the demands of the energy and transportation industries, let

⁵ The recent controversy surrounding Mike Brown of FEMA during the Katrina hurricane debacle shows that unqualified or marginally qualified people are sometimes appointed to positions of power for reasons that are as much or more about political relationships than qualifications for the position.

alone those of the telecommunications industry. This is particularly true in light of all of the new responsibilities thrust upon it by the Telecommunications Act of 1996 and the steady stream of FCC orders and Court decisions that have followed the adoption of that Act⁶.

In order to take on the obligations set forth in the proposals, our Commission would have to hire a number of additional staff people by getting approval from a legislature that has rarely been able to fully grant our Commission's request for additional manpower due to budgetary considerations. While we do not know this for certain, we would be surprised if there were not other states in similar positions. Again, since most if not all of these Commissions also regulate energy in some manner, one can only hope that USF distribution decisions are not made in haste due to a drain on resources arising from a controversial energy matter or because there are simply not enough resources to give such decisions due consideration.

Finally, in reading through the four proposals, we were unable to discern any clear reason why state commissions suddenly needed to be inserted as a sort of "middle man" into the flow of federal universal service funds. From the perspective of MITS' members, the existing Federal USF has worked well for many years now. We would agree that the proliferation of competitive ETCs along with the decline in interstate revenues among existing contributors to the USF have created additional pressures on the fund. However, we are hard-pressed to understand why those issues cannot be addressed without state commission involvement. Could not the number of ETCs in high-cost rural areas be limited to one wireline carrier and one wireless carrier? Further, could not the

⁶ State Commissions play a huge role in the implementation of the Act, as is reflected by the fact that they are mentioned more than 100 times in the Act.

current USF funding pool be increased by utilizing one or more of the methodologies that have been identified in previous proceedings?⁷

In summary, the insertion of state commissions into the USF distribution process suffers from a number of potential drawbacks. Not only could the distribution process be administered by commissioners who lack a fundamental familiarity with the program, the process could also become politicized. Particularly in very rural states, public utility commission elections tend to be fairly sleepy affairs that do not demand particularly large campaign funding. However, when these commissioners are suddenly given the power to decide which companies will or will not share in \$50 million to \$100 million in USF money each year, a huge incentive will be created for companies to do what they can to influence such elections. While the thought is distasteful to contemplate, the possibility nonetheless exists that USF distribution decisions could be influenced as well.

Appointed commissioners are not immune from such conduct either. Again, these concerns are in addition to concerns about whether smaller commissions even have the human and other resources necessary to take on these new responsibilities.

For the foregoing reasons, until and unless the current USF distribution mechanism is proven to be manifestly unworkable, we are hard-pressed to see the advantages of moving to a state commission distribution mechanism. The FCC currently has the ability to audit recipients of USF distributions and could quite easily impose the same regime on providers that utilize other technologies to provide universal service. In

⁷ For example, at the Stevens/Burns/Dorgan Universal Service Summits, Members of Congress, FCC Commissioners and industry representatives (including one from MITS) discussed ideas such as assessing intrastate telecommunications revenues as well as interstate revenues, assessing telephone numbers, eliminating the wireless “safe harbor”, and broadening the base of those required to make contributions to the USF to providers such as those using VoIP technology.

short, we strongly prefer the current system, which admittedly may need to be tightened up a bit here and there if the FCC finds wrongdoing in the course of audits.

On the other hand, it is certainly true in Montana that our Commission knows far more about our local circumstances than does the FCC. So MITS is not advocating that the FCC directly decide how much USF goes to each ETC in a state. If forced to choose one over the other, we would likely choose our state commission. But neither option is appealing. Again, we simply would like to retain the current system, in which providers report their costs and determine how best to use USF. If a piece of that system is broken, then fix that piece – don’t engage in wholesale change,⁸ disrupting universal service policy in rural America. Under these proposals, an incumbent ETC could be put out of business in the course of a couple of years if the state commission determines to take all of the incumbent’s support and give it to a competing ETC. MITS is persuaded that Congress wanted universal service mechanisms to be predictable so that providers would be incented to continue to invest. The SAM proposal, along with the others simply do not provide that kind of predictability and therefore discourage investment in rural America.

II. The national benchmark rates suggested by most of the proposals are neither affordable nor reasonably comparable. Further, they fail to take into account the critical issue of value of service in the context of local calling scope.

Most of the proposals also included a national benchmark local rate. Under those proposals carriers could only receive support to the extent charging at least the

⁸ 47 U.S.C. §254(b)(5) Again, this section states that “[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.”

benchmark local rate did not allow them to recover their costs. The rate that is mentioned most often is 125% of the national urban average local rate. MITS finds that proposed benchmark to be unsupportable. First, in rural areas the vast majority of subscribers suffer from a value-of-service problem. They have toll free calling only to the several hundred other residents of the community. There are often no health care facilities, no doctors, no lawyers, no accountants, and no governmental services with the possible exception of postal service. So calls to any of these kinds of entities will incur per-minute toll fees on top of the local service.

In addition to calling scope MITS submits that, on average, folks that work in rural areas earn less than those who work in urban areas. MITS further submits that, generally speaking, as rates go up they become unaffordable first to rural subscribers and then to urban subscribers. Obviously there are exceptions on both sides, primarily in impoverished neighborhoods within metropolitan areas. But we still believe the general rule to be true.

The point of the foregoing is that if rural subscribers tend on average to incur more toll call fees for similar calling patterns (e.g., both urban and rural households call their dentists, both call their tax preparers, both call their childrens' schools, etc.) and if they also tend to earn less than their urban counterparts, then a reasonably comparable local rate should be less than the national urban average not more. We at MITS would submit that if a benchmark is truly necessary, the more appropriate benchmark in rural areas would be 75% of the national urban rate and not 125%. The Joint Board needs to bear in mind that rates are not merely to be comparable but also just, reasonable and

affordable.⁹ In a nation in which there are such tremendous differences in economic circumstances, it is almost impossible to imagine a single rate that could be just, reasonable and affordable to all.

Conclusion

The current Universal Service Fund system is not so irrevocably broken that changes as massive as creating state block grants are in order. Change should instead be incremental. Limitations should be imposed on the number of ETCs that can be designated in a rural telephone company service area (we would suggest one wireline and one wireless provider). The source of any current abuse of the system should be resolved through audits and rules that impose penalties on improper conduct.

If a national benchmark rate is established, it should reflect reality. In reality, the vast majority of folks who live in areas benefiting from universal service support have a much lower “value of service” than their urban counterparts because so few of their calls can be made as local calls. Also in reality, the vast majority of these folks live on significantly lower wages than their urban counterparts. For these reasons, in order for the local rate in a rural area to be “comparable” and at the same time “just, reasonable and affordable,” that local rate should be less, not more, than the national urban average for local calls.

Finally some current policymakers appear to have lost sight of the fundamental reasons why the Universal Service Fund was created in the first place. It was created so that folks in populous states and cities could contribute a fair and reasonable amount to

⁹ 47 U.S.C. §254 (b)(1)

the creation and maintenance of a ubiquitous telecommunications system. The continuation of the universal service policy is of critical importance so that all parts of our nation can share their thoughts, ideas, goods and services with all of the other parts of the nation to the benefit of society as a whole. The price of that benefit is largely contained in the portion of subscribers' telephone bills that is contributed to the federal universal service fund.

RESPECTFULLY SUBMITTED This 30th day of September, 2005

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